

No. 13,352

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JULES D. GRATIOT and AIR-MAZE CORPORATION,

Appellants,

vs.

FARR COMPANY, a corporation,

Appellee.

REPLY BRIEF OF APPELLANTS.

HYDE, MEYER, BALDWIN & DORAN,
GEORGE S. BALDWIN,
1430 Keith Building,
Cleveland 15, Ohio,

HARRIS, KIECH, FOSTER & HARRIS,
FORD HARRIS, JR.,
DONALD C. RUSSELL,
417 South Hill Street,
Los Angeles 13, California,
Attorneys for Appellants.

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REPLY BRIEF OF APPELLANTS.

Introduction.

This is appellants' reply to the "Brief of Appellee," filed in this action, sometimes referred to hereinafter for convenience as "Appellee's Brief."

Appellee's Brief is significant in the following general aspects:

(a) Appellee's Brief ignores and does not attempt to answer many of the principal contentions of our Opening Brief;

(b) Appellee's Brief, by accident or otherwise, wholly misconstrues some of our principal contentions;

(c) Appellee's Brief misrepresents many of the Findings of Fact of the District Court;

(d) Appellee's Brief attempts to change the position that plaintiff took in the District Court on several important points; and

(e) Appellee's Brief consists largely of statements unsupported by the record; it should be limited to those portions where the record is correctly cited in substantiation of the statements made.

Most of the major contention of Appellee's Brief have been answered in advance by Appellants' Opening Brief. Some require further comment herein. Some of the erroneous or highly misleading statements of Appellee's Brief, which do not fit readily into the context of this reply, are set forth briefly in the Appendix at the end hereof.

Appellee's Brief contains 56 pages of a so-called "Statement of the Case," and 22 pages of "Argument." Since its "Statement of the Case" is largely argument, we make no attempt to follow the form of Appellee's Brief in this Reply. All emphasis is ours, unless otherwise noted.

The Filter of the '479 Farr Patent Has No "New Mode of Operation."

Appellee's Brief repeatedly refers to an alleged "new mode of operation" which it ascribes to the filter of the '479 patent in suit. As we shall demonstrate, there is no "new" mode of operation.

Appellee's Brief baldly asserts (p. 26): "the lower Court found that the Farr patent in suit disclosed a new combination of old elements [Finding 9, R. 61] combining old elements in a new way *so as to provide a new mode of operation* and new characteristic performance [Findings 3-6, incl., 8-14, incl.]." Examination of these findings plainly shows that the District Court found no such

thing. There was no finding by the District Court, in substance or effect, that the '479 filter has a "new" mode of operation, as we pointed out in our Opening Brief (pp. 19-20).

The "mode of operation" of the '479 patent filter is defined by Finding of Fact 4 [R. 59] as follows:

"4. At the start of the operation of the air panels of the patent in suit portions of the air flow through the mesh of the screening members into the adjoining passages but as the panels become loaded with dust the flow of air becomes more and more confined to flow through the passages."

Such "mode of operation" is set forth in claim 4 of the '479 patent in suit as follows:

". . . whereby the medium may flow through the mesh of said members near the entrance of the panel when the filter is clean and partially through said passages and thence through the mesh of the members located progressively towards the exit of the panel as the panel becomes progressively loaded with particles."

It is set forth in claims 7 and 8 of the '479 patent in suit as follows:

". . . as the mesh of the members becomes progressively clogged the medium to be filtered may flow through such passages and encounter unclogged openings in said mesh members."

Plaintiff's "prior art chart," Exhibit 32 [R. 986, 986-A], specifically admits that such "mode of operation" is present in the air filters of the prior art patents to Henshall, Orem, and Merryweather.

Thus, the District Court did not make any finding that the mode of operation of the '479 filter defined by its Finding 4 was in fact new, and plaintiff-appellee has flatly admitted in the evidence that such mode of operation was *in fact old in the art*.

Obviously, the filter of the '479 patent in suit has no "new" mode of operation, and we suggest, the statements in Appellee's Brief to the contrary may be dismissed as mere sophistry.

The Filter of the '479 Patent Provides No New or Different or Unusual or Surprising Results.

Appellee's Brief (pp. 58-59) states:

"The Farr filter panel achieved a new and *unusual and surprising result* of combining the ability to provide high efficiency in removing dust from air with a lower pressure drop than previous commercially built filters, which pressure drop does not rise as rapidly as previous filters. This was Finding 4 of the lower Court . . ." [Apparently, "4" is a typographical error in Appellee's Brief and should have been "6," as Finding 4 is wholly irrelevant.]

Examination of Findings 4 and 6 [R. 59-60], however, plainly shows that the District Court found no such thing. Nowhere did the District Court find, or otherwise indicate that it thought, that the results provided by the Farr '479 filter are either "unusual" or "surprising."

We concede, of course, that the efficiency and pressure-drop characteristics of the Farr '479 filter are "new" in the sense that they are slightly different from those of prior filters, but it is our contention that any such

differences are at best merely in minor degree and not in kind, and, certainly, do not sustain patentable novelty, as we pointed out at length in our Opening Brief (pp. 36-37), where we showed that the prior art Detroit Air Filters, and the Air-Maze Type B filters, had performance characteristics substantially the same as those claimed by plaintiff for its '479 filter in suit.

As shown by plaintiff's evidence, Exhibit 29 [R. 981], the *average* filtering efficiency of the paper Detroit Air Filter ("Brand Y") was 78.25%, as against an *average* filtering efficiency of the Farr '479 filter of 80.4% (computing "average efficiency" by taking the sums of the efficiency readings at four-hour intervals and dividing such sum by the number of readings). *Average* efficiency, of course, is the pertinent figure, as it provides an index of the over-all ability of a filter to remove dust from the air. Similarly, plaintiff's evidence, Exhibit 27, shows a number of competitive prior art filters having *even higher* average efficiencies [Fig. 6 filter, 82%; Fig. 33 filter, 81.2%; Fig. 58 filter, 81.8%; Fig. 66 filter, 84.3%].

It is therefore plain that as to *filtering efficiency*, there is nothing "unusual" or "surprising" about the performance of the '479 filter.

As to the rate of pressure drop rise, Appellee's Brief (p. 59) concedes that the Detroit Air Filter gave a slowly rising pressure drop.

When it is remembered that the standards of the industry permitted a pressure drop rise of up to 0.5 inches, and that all of the prior art filters referred to in the evidence had pressure drop rises well within this limit, it is plain that the results attained by the Farr '479 filter

were neither “unusual” nor “surprising.” Appellee’s Brief, of course, fails to point out any logical reason why the alleged results of the ’479 filter should be considered either “unusual” or “surprising.”

We suggest that any novelty, or even any alleged superiority, of the Farr ’479 filter over the prior art is at best minute, and does not warrant any inference of patentable invention.

The ’479 Claims in Suit Cover Mere Unpatentable Aggregations of Elements.

In our Opening Brief (pp. 28-34) we showed at length where every element of the ’479 claims in suit are to be found in the prior art of record, and that each of such elements functions exactly the same in the ’479 filter as it did separately in the art. No attempt is made in Appellee’s Brief to refute this statement of fact, and, indeed, Appellee’s Brief does not even deny the fact.

If all of the elements of the ’479 claims in suit are separately old in the prior art, where they separately performed the same functions as they perform in the ’479 device (as is clear from the evidence, and as seems to be conceded by Appellee’s Brief), the results of the ’479 filter are no more than the sum total of the individual functions of its elements. This is mere unpatentable aggregation, and is not invention. See:

Reckendorfer v. Faber, 92 U. S. 347;

Richards v. Chase Elevator Co., 39 U. S. 991;

Grinnell Washing Mach. Co. v. Johnson Co., 247 U. S. 426.

The Filter of the '479 Patent Did Not Fill Any Long-sought Demand in the Art.

Appellee's Brief would have it appear that the filter of the '479 patent provides results that were long sought in the art. There is no evidence to support such a contention, and, in fact, the evidence is to the contrary.

In support of its assertion, Appellee's Brief points (pp. 16-17) to Exhibit 27, the American Association of Railways Report. As we showed in our Opening Brief (p. 42), this report was merely on the relative characteristics of various filters on the market in 1937.

This report, PX-27, was clearly hearsay, as its author or authors are unknown and were never called as witnesses. True, Professor Rowley provided some of the information upon which the report ostensibly was based, but the report stated (p. 4) that its information was obtained additionally from "road tests conducted on the Illinois Central Diesel electric train" and "a questionnaire." Obviously, such report was merely hearsay as to the defendants, and its admission into evidence was clear error. Since the District Court placed great reliance on this report, as is admitted by Appellee's Brief (pp. 16-17), obviously its erroneous admission into evidence was highly adverse and prejudicial to defendants.

PX-27 shows (p. 9) that the maximum permissible pressure drop at that time (the year 1937) was 0.4 inches of water, yet all the evidence in this action is to the effect that the *present* maximum permissible pressure drop, as set by industry standards, is 0.5 inches of water (see our Op. Br. pp. 9, 37). Obviously, the advent and long commercial use of the Farr '479 filter with its alleged low pressure drop has not reduced the maximum pres-

sure drop permitted by industry standards; in fact, the maximum permitted by the standards has risen! This is exactly contrary to the normal expectation, if in fact the Farr filter was the answer to any prayer of the filter-using industry.

Plaintiff's Exhibit 27 nowhere indicates that the railroads or anyone else was not fully satisfied with the air filters available on the market in 1937. There is no direct evidence of any need or demand for a filter having the specific characteristics of the Farr '479 device. It seems to us logical to assume that if in fact there was such a need or demand, disinterested user-witnesses would have been plentiful to establish it, yet none were called to testify. The mere fact that Appellee may have sold a substantial number of the '479 filters does not, in itself, prove such a demand.

The '479 Filter Lacks Invention Over the Prior Art.

In our Opening Brief we stressed the point that even if the '479 filter differs in one particular or another from each of the various prior art filters in evidence, still the particular of difference in each case was at best minor in character and the '479 patent lacks invention. Thus, we said that: the only difference between '479 and the paper Detroit Air Filter is that the '479 patent uses wire screen instead of paper (Op. Br. pp. 39-42); the only difference between '479 and the prior use Farr '480 air cleaner and cooler was that '479 added a bend in the corrugations (Op. Br. pp. 43-46); the only possible structural difference between '479 and the prior art St. Cyr patent was that in '479 the change of direction of the corrugations is *more* abrupt (Op. Br. pp. 47-51); and the only possible difference between '479 and the Niestle

(French) patent was that the latter fills the wire mesh with oil instead of leaving it open as in '479 (Op. Br. pp. 51-54). As to each, we asserted that such features of possible difference were all extensively shown in the other prior art, and that *no invention was required to modify any of such prior art to provide exactly the structure of the '479 patent in suit.*

Appellee's Brief does not attempt to answer our foregoing contentions, but merely argues that no single prior art patent nor the '480 prior use device includes all of the elements of the '479 claims here in suit. This, we suggest, simply avoids the issue, as our above argument is addressed to the matter of *invention*, not *novelty*.

We submit that the '479 patent in suit is plainly invalid for lack of invention for any one of such reasons asserted by us.

The District Court Misconstrued Pertinent Prior Art.

The District Court [F. 10, R. 61] found that the prior art patents to Wood, Kirkham, Row, and Moller "are not filter panels operating on the principle of impingement of particles on collecting surfaces and do not remove dust by the same mode of operation referred to in Finding 4." In our Opening Brief (pp. 28-29, 45) we pointed out that *so far as dust removal is concerned* these prior art patents all show filters which operate to remove dust on the impingement principle, and that the District Court's finding to the contrary was erroneous. Appellee's Brief does not, and cannot, deny that *so far as dust removal is concerned*, all of such patents show filters which operate on the "impingement principle."

The District Court obviously, and erroneously, dismissed these prior art patents as lacking in pertinency on the theory that whereas in the patent in suit the dust hits and sticks to the collecting surfaces and remains there for days until the filter is cleaned, in such prior art, while the dust "might impinge for a moment" it is almost immediately washed off [R. 819]. Appellee's Brief (p. 27) also attempts to distinguish on this ground.

This, of course, is immaterial so far as the removal of dust from the air is concerned, as the '479 patent says nothing with regard to how the filter is ultimately cleaned of dust.

Actually, however, appellee recommends to industry that its '479 filter be *washed with water* to clean dust therefrom, its sales literature, PX-7, stating on page 6:

"An ordinary garden hose and nozzle and water pressure of 30 p. s. i. will, in most cases, satisfactorily clean the filter."

Thus, in both the '479 filter and the "water-washed" filters of the prior art, the dust is actually cleaned from the filter by washing with water. The mere fact that in such prior art the water-washing is at more frequent intervals than the recommended interval for washing the '479 filter does not, we suggest, in any way show a different mode of operation so far as *either* cleaning or dust removal is concerned.

We therefore submit that such prior art patents are directly pertinent and all operate to remove dust from air by the impingement principle, and that the District Court erroneously dismissed such art from consideration.

The '479 Patent in Suit Is Invalid for Lack of Invention Over the '480 Prior Use Device.

Appellee's Brief (p. 38) states: "*The Farr '480 Patent*: Appellants contend that the patent in suit is invalid over the Farr patent on the humidifier." This statement is deliberately erroneous, as appellants have never so contended. What we do contend is that the Farr '479 patent in suit is invalid for lack of invention over the *prior use '480 device*, first commercially sold in 1937 and differing from the '479 patent as to the filter media only in the absence of the bends in the corrugations (Op. Br. pp. 43-46).

Appellee's Brief (p. 38) further states:

"Appellants are in the impossible position of having to contend on the one hand that such sales of the humidifiers do not establish a date of invention by Farr of the filter panel in suit (for the purpose of confining the date of invention of the patent in suit to July 22, 1939) and on the other hand argue that the invention of the Farr filter panel was embodied in such humidifiers . . ."

This statement also deliberately misconstrues our argument. We say, not that the '480 "humidifier" embodies the invention of the Farr '479 filter, but that the '479 patent does not constitute an invention over the '480 device. Obviously, the '480 prior use device did not embody the same invention as covered by the claims here in suit, as it did not have any "bend" or "change of direction" in its corrugations, which is an element of each of the claims here in suit. Appellee's Brief (p. 39) concedes this. What we do say is that no invention was involved in the '479 patent in merely putting "bends"

in the corrugations of the prior use '480 device (Op. Br. pp. 43-46).

The testimony of R. S. Farr, president of appellee, plainly establishes that the '480 device was on sale and in commercial use long prior to the time when the '479 filter was thought of [R. 1089-1140]. The other son, M. S. Farr, admitted that *after* they had some experience with the evaporative cooler "we got the idea of building an air filter based on somewhat the same principle as the cooler" [R. 293]. Appellee's Brief (p. 39) distinguishes the structure of the '480 prior use device from that of the '479 filter. Thus, there can be no question of the fact that such '480 prior use device was prior art as against the later filter of the '479 patent in suit.

The applicant, M. N. Farr, likewise at all times treated the filter of the '479 patent in suit and the '480 prior use humidifier as two different and separate devices, as he filed two separate patent applications thereon, each of which resulted in a patent. Similarly, his son M. S. Farr distinguished the two devices, although he conceded that they were constructed generally the same [R. 349-353].

It is to be noted particularly that the District Court made no specific finding of fact as to the Farr '480 prior use device (and appellee never suggested one). The trial court, however, obviously felt that because the '480 prior use device was a "water-washed" device it was lacking in pertinency. We have pointed out the error in this in the preceding section of his reply with regard to the prior art patents to Wood, Kirkham, Row, and Moller, and the

same observations apply equally well to the '480 prior use device. As pointed out in effect by Mr. Duncan, plaintiffs' expert, in the '480 device the water on the screens acts as an *adhesive* to catch and hold the dust [R. 759], and he further pointed out the interchangeability of water and oil on filter screens with regard to the prior art Row patent [R. 784-785]. So far as removal of dust from the air is concerned, the '480 prior use device operates in the same way as the '479 patent in suit. In any event there would be no invention in using oil instead of water as the adhesive in the prior use '480 device, as is shown by Duncan's testimony as follows:

“Q. Well, using the filter media as shown in the '480 patent, if you wanted to use that simply as an air filter, it would be an obvious expedient to dip that panel in oil? . . .

The Witness: That would be a logical thing to do. Take the screen media of the '480 patent, and if you want to use it for a filter, it will eliminate a lot of difficulties if you just dunk it in oil and let it drain and then put it in place to act as a filter. The passages are pretty big and you can see straight through them, but it would catch dust.”

Defendants' P-5 Filter Does Not Infringe.

Appellee's Brief (p. 10) erroneously attempts to reduce all of appellants' contentions as to non-infringement to a single contention that by omitting the flat screens of the '479 patent defendants' P-5 filter avoids infringement. Appellee's Brief then at length attempts to answer such single contention. We think that the omission of flat

screen in the defendants' accused P-5 filter does in fact avoid infringement, for the reasons set forth at length in our Opening Brief. We do not propose to reargue this point here.

Appellee's Brief, however, substantially ignores the *other* equally sound reasons why the accused P-5 filter does not infringe which were detailed in our Opening Brief.

Our Opening Brief (pp. 57-59) pointed out that abandoned claim 6 of the abandoned Farr '904 application was specifically directed to a filter in which the corrugations of adjacent screens extend "in *diagonally opposite directions* whereby the crests of each convolution [corrugation] in a single strip are *brought into contact* with the crests of each convolution [corrugation] of the *next adjacent* strip"; that this is the specific structure of the defendants' accused P-5 filter; that it is not shown or described in the '479 patent in suit; and that, since such claim 6 was abandoned by Farr in response to a rejection thereof as unpatentable by the Patent Office, by file-wrapper estoppel appellee is now estopped from attempting to construe the claims here in suit to cover such specific features so abandoned.

Appellee's Brief (p. 51) concedes that such abandoned claim 6 is in some respects *narrower* than any of the '479 claims here in suit. It is obviously narrower in the respects italicized above. The decision of this Court in *Gasair Corp. v. Ransome Co.*, 140 F. 2d 818,

quoted at page 62 of our Opening Brief, is thus directly in point, since in that case the Court said: "*That this rejected claim is in a sense narrower than those allowed does not impair its use as a means of discovering the limits of the claimed invention.*" We again suggest that the appellee should not be permitted to recapture by interpretation of the claims here in suit the specific elements earlier claimed in claim 6 and abandoned by the applicant Farr. Such elements, of course, are specific features distinguishing the defendants' accused P-5 filter from that shown and described in the '479 patent in suit.

Secondly, as we pointed out in our Opening Brief, the patent here in suit is specifically limited to the inclusion of passages extending through the filter panel which subdivide the panel throughout its depth in two dimensions (see claims 7 and 8), and defendants' accused P-5 filter has no such passages since the space between any two adjacent crimped screens is open laterally entirely across the filter except where the crests of the corrugations cross and touch. Appellee's Brief (p. 12) attempts to construe such "passages" in the '479 claims in suit as formed *solely* by the corrugations of the crimped screens. This is erroneous, however, in view of the plain teaching of the '479 patent to the effect that in it the *flat screens* form one wall of such passages [R. 840: p. 1, Col. 2, lines 21-24, and p. 2, Col. 1, lines 6-10]. We therefore submit that merely because the accused P-5 has corrugations in its screens does not mean that such corrugations form "passages" extending through the panel and subdividing

the panel in two dimensions, as claimed in the '479 patent. We submit that the accused P-5 filter plainly does not have "passages" as shown and claimed in the '479 patent in suit, and does not infringe.

Conclusion.

We submit that Appellee's Brief does not answer the principal contentions made by appellants on this appeal, and that the decision of the District Court should be reversed for the reasons stated in our Opening Brief.

Respectfully submitted,

HYDE, MEYER, BALDWIN & DORAN,
GEORGE S. BALDWIN,
HARRIS, KIECH, FOSTER & HARRIS,
FORD HARRIS, JR.,
DONALD C. RUSSELL,

Attorneys for Appellants.

APPENDIX.

Erroneous and Misleading Statements in Appellee's Brief.

Page 5.—“First, that the Farr patent in suit for the first time provided the art with a filter panel which combined the ability to provide high efficiency in removing dust from air with a low pressure drop which does not increase rapidly [Findings 5, 6, 8, 9, 10, 11, 12, 13 and 14].”

This is represented by Appellee's Brief as the Finding of Fact of the District Court. A reference to the actual Findings, and particularly Finding 6 [R. 60] plainly shows that the District Court found no such thing. There was no finding that the '479 filter was the “first” to combine high efficiency with low pressure drop; all that Finding 6 says, in effect, is that the '479 patent combined high efficiency with a “lower” pressure drop than previously.

Page 5.—“Third, that the Farr filter panel discloses a new combination . . . which is not disclosed in *any* prior art patents [Findings 10, 11, 12, 13, and 14].”

Again, this is represented by Appellee's Brief as the Finding of Fact of the District Court. Actually, the District Court found no such thing. None of such Findings referred to, in substance or effect, find that the *combination* is not disclosed.

Page 8.—“In the instant case the trial court *has specifically found* the new and surprising result called for by this test in its expressed findings that the filter panels of the patent in suit were *the first* to combine the high efficiency in removing dust from the air with a low pressure drop which does not rise rapidly”

Here is another representation in Appellee's Brief as to the findings of the District Court, which is contrary to fact. As pointed out in the body of this reply, the trial court nowhere "specifically found the new and surprising result," and, as pointed out above, did not find that the '479 filter was the "first."

Page 10.—"The lower court found that Appellants' P-5 filter panel was basically identical with the patent in suit; *that they were of substantially identical construction, mode of operation and performance.*"

Again, the District Court did not so find. Findings 19 and 20 [R. 64] fall far short of the loose and free translation given them by Appellant's Brief.

Page 12.—". . . the 'air passages' of the filter panel of the patent in suit are formed and defined solely by the crimped or corrugated wire screen 4. . . ."

This entirely misconstrues the plain teaching of the '479 patent to the effect that its flat screens co-operate with the crimped screens to form the passages, as follows:

"certain of the screen wire members 4 of the filter are crimped or corrugated, as indicated in Fig. 3, to provide *in cooperation with adjacent screen members* air passages 5." [Pg. 1, Col. 2, lines 21-24.] The flat screen 9 "*serves both to define more restricted passages for the flow of air and also to better retain the filter members 4 in their desired positions*" [P. 2, Col. 1, lines 6-10].

Page 12.—". . . these flat screening members merely provide slight additional dust collecting surfaces, facilitate the process of manufacture and stiffen the filter. [R. 111.]"

This is erroneous for the reasons last given.

Pages 13-14.—“. . . the air filter panel of the patent in suit is dependent for its filtering action on the air actually passing through the openings of the screen . . .”

This is erroneous. The '479 patent clearly teaches that it is unnecessary for the air to pass through the screens, as follows:

“I have further discovered that it is unnecessary in an air filter panel to force the flow of air through the screens employed in the panel to secure the desired cleaning efficiency” [P. 1, Col. 1, lines 28-31].

Page 19.—“Appellants’ suggestion (App. Br. p. 10) that these tests are ‘fantastic’ as to the 90% efficiency of the Farr filter finds no support whatever in the record . . .”

Our statement was correct. Plaintiff’s Exhibit 8, its recent Technical Report published to the industry, plainly states (p. 4): “The first test with this standardized dust showed the Farr Air Filter to have an efficiency of 92%. This high efficiency was misleading;” and, again (p. 6), as to more recent tests of the Farr '479 filter “. . . it was disconcerting to find that the efficiency of the Farr Air Filter dropped considerably below the published claim of 92%.”

Page 26.—“The lower court found that the Farr patent in suit disclosed a new combination of old elements [Finding 9, R. 61] combining old elements in a new way *so as to provide a new mode of operation and new characteristic performance* [Findings 3-6, incl., 8-14, incl.]”

As to the italicized portion, the District Court found no such thing, as an examination of the referenced Findings plainly shows.

—4—

Page 28.—“As shown on Plaintiff’s Claim Chart [Ex. 32] for example considering Claim 4 [R. 986] this patent is therefore not an impingement filter operating to collect particles on a collective surface—the water collects and washes away the dust”

This is misleading in the extreme. Actually, Mr. Duncan, plaintiff’s expert clearly testified that the prior art Row patent was an “impingement type” filter, as follows:

“Q. Then you went on to say: ‘The disclosure of the fundamental principles of operation of an impingement type filter are very clearly set forth in Mr. Row’s patent.’ Do you agree that that is the situation? A. I have no quarrel with that statement.” [R. 782.]

“Q. But so far as the removal of the dust from the air is concerned, the Row construction is an impingement type filter, is it not? A. Particles impinge on the surface of the Row structure; yes.

“Q. And are collected there until they are washed away by the water? A. Yes.” [R. 783.]

Pages 42-43.—“. . . The lower court in its Memorandum Opinion clearly correctly finds that it [St. Cyr] was not an air filter panel; that it was a device supplied by fluid rather than an impingement filter;”

Reference to the District Court’s Opinion [R. 820] plainly shows that it never found or intimated that the St. Cyr patent “was not an air filter panel” or was not an “impingement filter,” as represented by Appellee’s brief.

Pages 50-51.—“. . . It does not define (as all of the claims in suit define) that the members, whether strips

or wire screen, are positioned in the panel 'extending in the general direction of the intended flow through the panel of medium to be filtered,' whereas the record here demonstrates that this feature is essential to the Farr panel. . . ."

This is plainly erroneous, as claims 7 and 8 in suit say nothing about screens "extending in the general direction of the intended flow." Also, if such feature is "essential to the Farr panel," as represented by Appellee's Brief, claims 7 and 8 are plainly invalid as failing to include an essential element. See: *Goodman v. Super Mold Corp.*, 103 F. 2d 474, 480 (C. C. A. 9th, 1939); *Crampton Mfg. Co. v. Crampton*, 153 F. 2d 543, 544 (C. C. A. 6th, 1946); *Altoona Publix Theatres, Inc. v. American Tri-Ergan Corp.*, 294 U. S. 477, 55 S. Ct. 455, 79 L. Ed. 1005, at 1012; *Great A. & P. Tea Co. v. Supermarket Equip. Corp.*, 340 U. S. 147, 71 S. Ct. 127, 95 L. Ed. 162 at 165.

Page 59.—"Not only does the combination of the Farr patent in suit exhibit new functions and new and unusual and surprising results but there is an expressed finding that this combination and the new results were not obvious from the prior art."

The District Court nowhere so found, in substance or effect.

Page 62.—"Appellants make no attempt to establish that there exists any prior art having the combined characteristics of high efficiency and low pressure drop with the slow rise in pressure drop. Notwithstanding the findings of the lower court that this constituted a new result. . . ."

The District Court nowhere found that combining “characteristics of high efficiency and low pressure drop with a drop with a slow rise in pressure drop,” either in substance or effect, was “a new result.”

Page 69.—“. . . It is not true as asserted in Appellants’ brief that Claims 4, 5, 7 and 8 of the patent in suit are broader than the claims of application 285,904”

This is directly contrary to the position taken by appellee in the District Court, in which it represented twice to the District Court that claim 6 of abandoned application 285,904 was *narrower* than the ’479 claims here in suit [R. 815-817].